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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DARYL LOWRY,

Plaintiff and Appellant,

v.

MOTOR WORKS-PRO-MAC, LLC et al.,

Defendants and Respondents.

D052220

(Super. Ct. No. GIS25387)

APPEAL from an order of the Superior Court of San Diego County, William S. Cannon, Judge. Affirmed.

I.

INTRODUCTION

Daryl Lowry filed this action against his former employer, Motor Works-Pro-Mac, LLC (Motor Works), and two of its owners, Mike Kelley and Arturo Gonzales.¹ In his first amended complaint, Lowry brought claims for wrongful termination, harassment,

¹ Lowry's complaint also names Sergio Bertelli as a defendant. Bertelli was not named in the court's order of dismissal, and he is not a party on appeal.

discrimination, negligent and intentional infliction of emotional distress, nepotism, and defamation. The trial court sustained defendants' demurrer to Lowry's complaint without leave to amend, and dismissed the action. On appeal, Lowry has failed to demonstrate that the trial court erred in dismissing his case. Accordingly, we affirm the order of dismissal.

II.

FACTUAL AND PROCEDURAL BACKGROUND²

In October 2006, Lowry filed a first amended complaint against Motor Works, Kelley, Gonzalez, and Bertelli. Although Lowry's complaint is unclear in many respects, most of his claims arise from his former employment as a delivery driver for Motor Works. In a wrongful termination claim, Lowry stated that Kelley's termination of Lowry's employment violated "'Public Policy' there [*sic*] was no cause at all [*sic*] never a reason given to me at all." Lowry also alleged that Kelley "always" wanted Lowry to break speeding laws.

In a cause of action entitled, "Harassment," Lowry alleged that Kelley harassed him by insisting that he return to the office by 4:00 p.m. on a regular basis, even in bad traffic conditions. In a claim entitled, "Discrimination," Lowry alleged that Kelley

² Lowry's appellant's appendix does not contain his first amended complaint, the defendants' demurrer, or the trial court's order sustaining the demurrer without leave to amend. (See California Rules of Court, rule 8.124(b)). However, the defendants have provided these documents in their appendix. We draw our factual and procedural summary from these documents.

discriminated against Lowry by altering Lowry's time cards, and by hiring illegal immigrants and members of Kelley's own family.

Lowry also alleged that Kelley caused him emotional distress by, among other actions, changing Lowry's time cards and attempting to force Lowry to quit. In addition, Lowry claimed that both Kelley and Gonzalez provided poor references to Lowry's potential employers. Lowry also brought a claim entitled "Nepotism" in which he alleged that Gonzalez and Kelley had hired their sons to work at Motor Works. In a defamation claim, Lowry restated his allegation that Kelley provided prospective employers with negative references regarding Lowry.

Defendants filed a demurrer. In a brief in support of their demurrer, defendants claimed that Lowry's complaint was unintelligible in that it failed to specify "what each cause of action is and against whom each cause of action is directed." Defendants also claimed that Lowry's allegations were insufficient to sustain any of the causes of action in the first amended complaint. Specifically, with respect to Lowry's wrongful termination claim, defendants claimed that Kelley's alleged desire to have Lowry break speeding laws did not constitute a violation of public policy.

The trial court sustained defendants' demurrer without leave to amend. With respect to Lowry's wrongful termination claim, the trial court stated in relevant part, "Assuming refusing to violate speeding laws is a sufficient predicate for this tort, [the first amended complaint] does not allege facts showing [Lowry] was terminated because he refused to violate speeding laws." The court further noted, "[Lowry] alleges he was never given a reason for the termination and he does not allege he was terminated for

refusing to speed. At best [Lowry] alleges his employer wanted [Lowry] to speed on some occasions."

The court subsequently entered an order of dismissal.

Lowry timely appeals.

III.

DISCUSSION

Lowry claims that the trial court erred in sustaining defendants' demurrer without leave to amend and dismissing his case. The primary contention that Lowry appears to advance in his brief is that he was unlawfully terminated without good cause.³ Lowry states, "I was not an employee at-will, there was never an employee handbook that stated I was an at-will employee" Lowry also argues, "I the plaintiff was never told why I had to be terminated for any specified reasons, in which [*sic*] was never done. The laws state there has to be specific reasons on terminating any employment." Lowry further states, "Mr. Kelley wanted me to break all types of traffic laws to appease the company, but I would not do this. He would always tell me I want you back by 4:00 p.m."

A. *Standard of review and governing law*

" " " 'A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .' [Citations.]" [Citation.]" [Citations.]"
(*Ritter & Ritter, Inc. v. Churchill Condominium Ass'n* (2008) 166 Cal.App.4th 103, 128.)

³ Lowry's first amended complaint does not contain a claim of breach of contract.

In *McClain v. Octagon Plaza, LLC* (2008) 159 Cal.App.4th 784, 791-792, the court outlined the law governing appellate review of a trial court's order sustaining a demurrer without leave to amend:

"Because a demurrer both tests the legal sufficiency of the complaint and involves the trial court's discretion, an appellate court employs two separate standards of review on appeal. [Citation.] . . . Appellate courts first review the complaint de novo to determine whether or not the . . . complaint alleges facts sufficient to state a cause of action under any legal theory, [citation], or in other words, to determine whether or not the trial court erroneously sustained the demurrer as a matter of law. [Citation.]' [Citation.]

"Second, if a trial court sustains a demurrer without leave to amend, appellate courts determine whether or not the plaintiff could amend the complaint to state a cause of action. [Citation.]' [Citation.]"

Labor Code section 2922 establishes a statutory presumption of at-will employment. In the absence of an agreement that the employee may be terminated only for cause, the employee is, pursuant to this statute, an at-will employee. " '[A]n at-will employee may be terminated for no reason, or for an arbitrary or irrational reason' " However, " 'there can be no right to terminate for an unlawful reason or a purpose that contravenes fundamental public policy.' " (*Casella v. SouthWest Dealer Services, Inc.* (2007) 157 Cal.App.4th 1127, 1138-1139.)

B. *Application*

The factual assertions that Lowry makes in his brief do not demonstrate that his first amended complaint contains sufficient facts to state a cause of action for either wrongful termination or breach of contract, or that Lowry could amend his complaint to sufficiently state such claims. Lowry's assertion that there was no employee handbook

stating that he was an at-will employee is irrelevant in light of the presumption of at-will employment established in Labor Code section 2292. Because an employer may terminate an at-will employee for any reason that does not contravene a fundamental public policy, Lowry's claim that he was not given a reason for his termination is not a sufficient factual assertion on which to base a claim for either wrongful termination or breach of contract. Finally, while Lowry states in his brief that Kelley wanted him to break traffic laws, Lowry did not allege in his complaint, or claim that he could allege, that he was terminated for refusing to break such laws. Thus, Lowry has not demonstrated that he could sufficiently allege a claim for wrongful termination.

Accordingly, we conclude that Lowry has not demonstrated that the trial court erred in sustaining defendants' demurrer without leave to amend. (See *McClain v. Octagon Plaza, LLC*, *supra*, 159 Cal.App.4th at pp. 791-792.)

IV.

DISPOSITION

The trial court's order sustaining defendants' demurrer without leave to amend and the court's order of dismissal are affirmed. Respondents are entitled to costs on appeal.

AARON, J.

WE CONCUR:

NARES, Acting P. J.

IRION, J.